

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

01-CR-0376

BRUCE H. MASON,

Defendant.

THOMAS J. McAVOY
United States District Judge

DECISION and ORDER

I. INTRODUCTION

After a bench trial, Defendant Bruce Mason was convicted of, among other things, arson and bank fraud (check kiting). Defendant now moves for a new trial pursuant to Fed. R. Crim. P. 33 on the grounds that he has newly discovered evidence. One of the grounds asserted by Defendant is that one of the main witnesses, Gary Edison, has recanted his testimony. Defendant claims this through the affidavits of Fred Gage and David Ferris.

“Courts are particularly reluctant to grant [] motions [for a new trial] where the newly discovered evidence consists of a witness recantation as such recantations are looked upon with the utmost suspicion.” United States v. DiPaolo, 835 F.2d 46, 49 (2d Cir. 1987) (internal quotation omitted). The Court is particularly suspicious in this case as Defendant has tried everything in his power to deny what this Court believes to be substantial, if not overwhelming, evidence of his guilt. Further suspicion is raised here by the fact that the alleged recantation is not by Edison himself, but through the affidavits of two individuals who claim that Edison has told them inconsistent stories. Moreover, the Court is well aware that

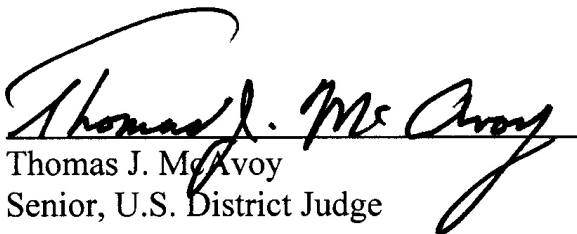
Edison had previously denied involvement with the arson. If Edison has recanted, then Defendant should be able to get an affidavit from Edison to this effect.

Before ruling on this motion, the Court directs Defendant to submit additional information concerning Gage and Ferris's relationship with Edison, Gage and Ferris's relationship with Defendant, and precise information concerning when and where the alleged conversations with Edison took place. Defendant also is directed to obtain an affidavit from Edison regarding any claimed recantation or, in the alternative, explain why he has been unable to obtain such an affidavit. Defendant shall submit such information to the Court, and serve the same on the government, within thirty days.

The Court directs the government to submit evidence concerning Edison's whereabouts at the time of these alleged conversation, *i.e.* was he incarcerated, and whether he was visited by Gage and Ferris on the dates when the alleged conversations took place. The government may submit any further evidence concerning the credibility of these affidavits. The government's submissions shall be due within sixty days.

IT IS SO ORDERED.

Dated: August 17, 2005


Thomas J. McAvoy
Senior, U.S. District Judge

Dated: